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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/799,340

03/12/2004

Doug Wroblewski

0644-032407

6222

28289

7590

10/23/2006

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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 10/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/799,340

Applicant(s)

WROBLEWSKI, DOUG

Examiner

Yvonne M. Horton

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-9 and 11-17 is/are rejected.
- 7) ☒ Claim(s) 5 and 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08/09/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2 and 6-9 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #3,110,323 to HELGUERA. HELGUERA discloses a drain including a drain body (10) defining a cavity, a frame (22) secured therein and capable of rotating, a clamp (21), and a grate (14). In reference to claim 2, the frame (22) is circular. Regarding claim 6, the frame (22) at an exposed end includes a seat in the form of threads (13). In reference to claims 7 and 8, the clamp (21) includes a body (25) having a protrusion (24); wherein, the body (25) is a fastener threaded thereto. Regarding claim 9, the drain body (10) includes a fastener receiving member (20).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,110,323 to HELGUERA. HELGUERA discloses the use of a drain except for an exposed end thereof having a non-circular or rectangular configuration. Although the drain end of HULGUERA is not non-circular or rectangular, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select a drain end suitable for the use intended as an obvious matter of design choice. For instance, if the end is being attached to a non-circular member, the drain end should also be non-circular in order to facilitate an ease of engagement therewith.

Claims 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,110,323 to HELGUERA. HELGUERA discloses the method of installing a drain including the steps of fixing a drain, positioning a rotatable frame by orienting the frame relative to its surroundings, securing the frame, and positioning a grate. HELGUERA discloses the basic claimed method except for fixing the drain in a floor. Although HELGUERA does not dispose his drain in the floor, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the drain of HELGUERA is fully capable of being positioned in a floor. Further, the

manner in which a device is intended to be employed does not differentiate the device from a prior art device satisfying the claimed structural limitations. Regarding claim 12, the frame (22) is circular. In reference to claim 13, HELGUERA discloses the use of a drain except for an exposed end thereof having a non-circular or rectangular configuration. Although the drain end of HULGUERA is not non-circular or rectangular, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select a drain end suitable for the use intended as an obvious matter of design choice. For instance, if the end is being attached to a non-circular member, the drain end should also be non-circular in order to facilitate an ease of engagement therewith. Regarding claims 14 and 15, again the drain of HELGUERA is not specific to a floor or a wall or to surroundings including floor tiles or a wall; however, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the same would be fully capable of being positioned within surroundings consisting of floor tiles or a wall. In reference to claim 16, the securing step includes clamping the frame between a clamp body and the drain body. Regarding claim 17, the clamping step includes extending a fastener (25).

Allowable Subject Matter

Claims 5 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

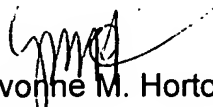
Conclusion

Art Unit: 3635

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on (571) 272-6848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Yvonne M. Horton
Examiner
Art Unit 3635